

Kolin Plumbing Corp.; Kolin Environmental, Inc.; H. Kolin Plumbing Corp.; H. Kolin Environmental, Inc.; Dial-A-Water-Heater, Inc.; and MSJ Enterprises, Ltd. and Plumbers' Local Union 200 of Long Island, New York, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Cases 29-CA-17195 and 29-CA-17340

December 20, 2001

CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

SUPPLEMENTAL DECISION AND ORDER

On September 28, 1998, the National Labor Relations Board issued an unpublished Order adopting, in the absence of exceptions, the decision of the administrative law judge directing Respondents Kolin Plumbing Corp. and Kolin Environmental, Inc.,¹ to offer full and immediate reinstatement to John J. Demsheck Jr., James Ott, and Donald C. Muller; to make them whole for loss of earnings and other benefits resulting from the discrimination against them in violation of the National Labor Relations Act; to make whole the Respondents' employees and the benefit funds of Plumbers' Local Union 200, by transmitting all benefit fund payments due since September 8, 1992, under the 1991-1994 collective-bargaining agreement with the Union; and to make their employees whole by reimbursing them for any losses ensuing from the Respondents' failure to make the contributions. On February 21, 1995, the United States Court of Appeals for the Second Circuit entered a judgment enforcing the Board's Order.²

A controversy having arisen over the amount of backpay and reimbursement due the discriminatees and the contributions owed to the funds owed under the Board's Order, the Regional Director for Region 29 issued a compliance specification and notice of hearing on February 26, 1999, naming as Respondents Kolin Plumbing Corp., Kolin Environmental, Inc., H. Kolin Plumbing Corp., H. Kolin Environmental, Inc., Dial-A-Water-Heater, Inc., and MSJ Enterprises, Ltd.; alleging that all six Respondents comprise a single employer and that H. Kolin Plumbing Corp., H. Kolin Environmental, Inc., and Dial-A-Water Heater, Inc. have been alter egos of, and successors to, Kolin Plumbing Corp. and Kolin Environmental, Inc.; alleging the amounts due under the Board's Order; and notifying the Respondents that they

should file a timely answer complying with the Board's Rules and Regulations.

On or about March 17, 1999, H. Kolin Plumbing Corp., Dial-A-Water-Heater, Inc., and MSJ Enterprises, Ltd., (collectively called the additional Respondents) through their attorneys, filed a timely answer to the compliance specification. The answer, *inter alia*, denied that the additional Respondents constituted a single employer with the original Respondents, Kolin Plumbing Corp. and Kolin Environmental, Inc., denied that H. Kolin Plumbing Corp. and Dial-A-Water-Heater, Inc. are alter egos of, and successors to, the original Respondents, and denied that the additional Respondents are jointly and severally liable to comply with the terms of the Board's Order. The answer also claimed insufficient information to admit or deny the allegations concerning the discriminatees, the backpay period, the computation of gross backpay, interim earnings, net backpay, benefit fund contributions, and medical expense reimbursement.³

On April 6, 1999, an attorney for the additional Respondents notified the Region that Kolin Plumbing Corp., Kolin Environmental, Inc., and H. Kolin Environmental, Inc. (collectively called the Respondent Companies)⁴ were not represented by that firm, and that they could be contacted directly through their principal, Harvey Kolin. Although properly served with a copy of the compliance specification, Respondents Kolin Plumbing Corp., Kolin Environmental, Inc., and H. Kolin Environmental, Inc. failed to file an answer to the compliance specification.

On November 5, 1999, the Regional Director for Region 29 issued an amended compliance specification and notice of hearing, amending the backpay amounts owed to the three named discriminatees, adding an additional benefit fund to which payments are owed, and quantifying the contributions owed to the Union's benefit funds on behalf of the Respondents' present and former employees.⁵

By letter dated November 29, 1999, counsel for the General Counsel advised Harvey Kolin and Scott Kolin, principals of all six Respondents, that no answer to the

³ The additional Respondents also claimed insufficient knowledge to admit or deny the allegations regarding the Board's Order and the place of incorporation and principal place of business of Respondents Kolin Plumbing Corp., Kolin Environmental, Inc., and H. Kolin Environmental, Inc. The additional Respondents admitted the allegations concerning their place of incorporation and principal place of business.

⁴ We recognize that H. Kolin Environmental, Inc. was not a respondent in the original proceeding. The collective term here applies to those respondents who have not filed any answer to the compliance specifications.

⁵ A copy of the amended compliance specification was served on counsel of record for the additional Respondents, as well as on each of the six named Respondents.

¹ The judge found that Respondents Kolin Plumbing Corp. and Kolin Environmental, Inc. constitute a single employer.

² Docket No. 95-4009.

amended compliance specification had been received and that unless an appropriate answer was filed by December 8, 1999, summary judgment would be sought. None of the six Respondents filed an answer to the amended compliance specification.⁶

On December 14, 1999, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On December 22, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents have not filed a response to the Notice to Show Cause.

On the entire record the Board makes the following

Ruling on the Motion for Summary Judgment

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Sections 102.56(b) and (c) of the Board's Rules and Regulations state:

(b) *Contents of answer to specification.* -The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.* -If the respondent fails to file any answer to the specification within the time prescribed by this

section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate. If the respondent files an answer to the specification, but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

In the Motion for Summary Judgment, the General Counsel contends that the six Respondents failed to file an answer to the amended compliance specification and notice of hearing and that, under Section 102.56(c) of the Board's Rules and Regulations, the Board should find the allegations of that specification to be true and issue an order based on those findings.

It is clear that the Respondent Companies have failed to file an answer to the original compliance specification or to the amended compliance specification, and have not shown good cause for the failure to do so. Therefore, we grant the General Counsel's Motion for Summary Judgment as to the Respondent Companies and deem all the allegations in the amended compliance specification to be admitted as true against them except as set forth below.⁷

The additional Respondents, however, filed a timely answer to the original compliance specification. Their failure to file an answer to the amended compliance specification does not negate their timely answer to the original specification where, as here, the allegations of the original compliance specification are substantially the same as the allegations of the amended compliance specification. See generally *Media One Inc.*, 313 NLRB 876 (1994).

In their answer, the additional Respondents denied that they constitute a single employer of Kolin Plumbing Corp. and Kolin Environmental, Inc. and that H. Kolin Plumbing Corp. and Dial-A-Water-Heater, Inc. are successors to, and alter egos of, Respondents Kolin Plumbing Corp. and Kolin Environmental, Inc. We find the

⁶ On December 6, 1999, Harvey Kolin telephoned the counsel for the General Counsel in response to the November 29, 1999 letter, and indicated that he would be requesting an extension of time in which to file an answer on behalf of all six Respondents. No request for an extension of time was ever received. Counsel for the General Counsel thereafter wrote to Harvey Kolin on December 8, 1999, confirming that telephone conversation and advising him that his "failure to file an Answer could have very serious ramifications for [him] and for the above six companies."

⁷ In the amended compliance specification, the Regional Director reserved the right to submit claims at a later date, upon the receipt of additional information, for any medical reimbursement amounts owed to all present and former journeyman plumbers and apprentice plumbers employed by the Respondents who suffered financial losses due to the Respondents' failure to honor the 1991-1994 collective-bargaining agreement with the Union.

denial of this allegation in the answer to the original specification sufficient to raise an issue as to the derivative liability of the additional Respondents that must be resolved at a hearing.

We need not decide the question of the adequacy of the additional Respondents' answer to the gross backpay allegations of the specification. Resolution of the derivative liability issue will necessarily resolve that question as well. If the additional Respondents are not found to be a single employer, alter ego, or successor, then they will not be liable for any backpay. If, on the other hand, the General Counsel establishes that such a relationship exists among the Respondents, then the additional Respondents will be bound by the failure of the original Respondents, against whom we have granted summary judgment, to file an adequate answer here. See generally *Carib Inn Tennis Club & Casino*, 320 NLRB 1113 (1996), enf. 114 F.3d 1169 (1st Cir. 1997).⁸

Finally, we find that the discriminatees' interim earnings and medical expenses have been timely placed into issue by the answer of the additional Respondents. That information is generally not within the knowledge of a respondent, and a general denial is sufficient to defeat a motion for summary judgment under Section 102.56(b) of the Board's Rules. See *Dews Construction Corp.*, 246 NLRB 945, 947 (1979). Accordingly, we shall order a hearing as to these issues.

In sum, we grant the General Counsel's Motion for Summary Judgment against Kolin Plumbing Corp., Kolin

Environmental, Inc., and its single employer, alter ego, and successor H. Kolin Environmental, Inc., except to the extent that issues raised by the other Respondents, H. Kolin Plumbing Corp., Dial-A-Water-Heater, Inc., and MSJ Enterprises, Ltd., have been remanded for a hearing.⁹ Accordingly, we shall not make a determination of final backpay liability at this time. *Hahn Motors*, 314 NLRB 511, 513 (1994).

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment against Respondents Kolin Plumbing Corp., Kolin Environmental, Inc., and its single employer, alter ego, and successor H. Kolin Environmental, Inc. is granted, except to the extent that the issues of interim earnings and medical expenses are remanded to be decided at a hearing.

It is further ordered that this proceeding is remanded to the Regional Director for Region 29 for the purposes of issuing a notice of hearing and scheduling the hearing before an administrative law judge, limiting such proceeding to the determination of derivative liability, interim earnings, and medical expenses with regard to H. Kolin Plumbing Corp., Dial-A-Water-Heater, Inc., and MSJ Enterprises, Ltd.

It is further ordered that the administrative law judge shall prepare and serve on the parties a supplemental decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the administrative law judge's decision on the parties, the provisions of Section 102.56 of the Board's Rules shall be applicable.

⁸ Chairman Hurtgen agrees with his colleagues that summary judgment is warranted against H. Kolin Plumbing, Dial-A-Water-Heater and MSJ Enterprises on the issue of gross backpay because the original Respondents did not file an answer and because these three Respondents' answer to the original specification—which merely “den[ie]d knowledge or information sufficient to form a belief”—is insufficient to defeat summary judgment as to this allegation. Sec. 102.56(b) of Board's Rules and Regulations. See, e.g. *Aquatech, Inc.*, 306 NLRB 975 (1991).

⁹ Our ruling does not, however, permit Respondents Kolin Plumbing Corp., Kolin Environmental, Inc., and its single employer, alter ego, and successor H. Kolin Environmental, Inc. to participate in that hearing. See *Transportation by La Mar*, 281 NLRB 508, 510 fn. 6 (1986).